

Federal Court



Cour fédérale

Date: 20260114

Docket: IMM-16457-24

Citation: 2026 FC 54

Ottawa, Ontario, January 14, 2026

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

11043277 CANADA INC.

Applicant

and

**THE MINISTER OF EMPLOYMENT AND
SOCIAL DEVELOPMENT CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of an officer with Employment and Social Development Canada (“ESDC”) (the “Officer”) dated August 26, 2024, that resulted in a negative Labour Market Impact Assessment (“LMIA”) (the “Decision”).

[2] The LMIA was sought by the Applicant in respect of the hiring of a foreign national, pursuant to the Temporary Foreign Worker Program (“TFWP”), as a transport truck driver for the Applicant’s transport trucking business.

[3] The Applicant argued that the Decision is unreasonable, the Officer breached the duty of procedural fairness owed to the Applicant, and the Officer fettered their discretion.

[4] The Respondent argues that the Decision is reasonable and that there was no breach of procedural fairness or fettering of the Officer’s discretion.

[5] For the reasons that follow, this Application is dismissed.

II. Legislative Scheme

[6] The TFWP permits Canadian employers to hire temporary foreign workers (“TFW”) as a last resort to fill immediate skill and/or labour shortages where qualified Canadian citizens and/or permanent residents are not available to perform the required work.

[7] This program is not designed to create jobs for foreign nationals, rather it is designed to assist Canadian employers to meet their genuine labour needs.

[8] Pursuant to the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]* and the *Immigration and Refugee Protection Regulations, SOR/2002-227 [IRPR]*, foreign nationals, persons who are not Canadian citizens or permanent residents, may not work in Canada unless

they meet certain requirements—Among them, the individual must have a work permit issued from Immigration, Refugees and Citizenship Canada (“IRCC”).

[9] Part 11 of the *IRPR* governs work permits for TFWs. One of the conditions for the issuance of a work permit for a TFW is that the prospective employer receive a positive LMIA from ESDC, indicating the offer of employment is genuine, and the employment of a foreign worker is likely to result in a positive or neutral effect on the Canadian labour market.

[10] Officers are to determine that the prospective employment offer is “genuine” based on an assessment of the four factors set out at subsection 200(5) of the *IRPR*. Relevant to this Application are the factors set out at subsection 200(5)(b) and (c). Subsection 200(5)(b) requires a determination that the employment offer is “consistent with the reasonable employment needs of the employer”. Subsection 200(5)(c) requires a determination that the terms of the offer of employment are “terms that the employer is reasonably able to fulfill”.

[11] Subsections 203(1) and 203(3) of the *IRPR* set out the factors that an officer must consider in the assessment of a LMIA application to determine if the proposed employment for a TFW will have a positive or neutral effect on the Canadian labour market. Subsection 203(3) of the *IRPR* sets out six factors; relevant to this Application is subsection 203(3)(e): Will the employer hire or train Canadian citizens or permanent residents, or has or will the employer agree to make reasonable efforts to do so.

III. Background Facts

[12] The Applicant, 11043277 Canada Inc., also known as The North Transportation, was created and incorporated in October 2018 and has trucking operations across North America.

[13] In December 2023, the Applicant advertised a position on Job Bank, All Star Jobs, Career Owl and Jobs for Aboriginals. The job posting indicated that the Applicant was seeking a transport truck driver and required applicants to have 13+ years of experience; a Class A driver's licence or commercial driver's licence; a clear driving record; knowledge of safely operating and maintaining various types of dangerous goods; and knowledge and experience in the operation of large trucks and tractor-trailers.

[14] The Applicant was unable to find a suitable candidate for the position.

[15] On February 2, 2024, the Applicant applied for a LMIA, seeking to hire a foreign national to work as a transport truck driver with the Applicant's transportation and trucking business.

[16] On July 12, 2024, the Officer sent an email to the Applicant and their counsel requesting additional information to complete the assessment of the application. The Officer requested the following information be provided by July 18, 2024:

- (a) a copy of the Applicant's trucking insurance document showing the number or list of all the trucks insured;

- (b) answers to several follow up questions about the number of drivers and trucks employed by the business, pay rates and fees;
- (c) justification as to why the Applicant sought 13 plus years of experience from Canadian applicant drivers in their job postings; and
- (d) confirmation that the business would administer Mandatory Entry Level Training (“MELT”), a requirement for truck drivers in Ontario.

[17] On July 18, 2024, the Applicant requested an extension of time, until July 25, 2024, to provide the requested information. The Officer granted the extension of time.

[18] On July 24, 2024, the Applicant provided its response to the information requested by the Officer.

[19] On July 25, 2025, the Officer requested an “up-to-date Carrier profile”.

[20] On July 26, 2024, the Applicant provided a new National Safety Code certificate and Carrier Profile from Alberta. This information indicated that the Applicant owned a fleet of 67 trucks.

[21] I note that the original Carrier Profile submitted with the LMIA on February 2, 2024 indicated ownership of 23 trucks; in the supporting narrative for the LMIA and in response to the request for additional information, the Applicant asserted ownership of over 140 trucks.

However, the updated National Safety Code certificate and Alberta Carrier Profile provided on July 26, 2024 only demonstrated ownership of 67 trucks.

[22] On August 26, 2024, the Officer issued a negative LMIA on the basis that the job offer was not genuine and it was unlikely to have a positive or neutral effect on the Canadian labour market. The Officer made the following findings concerning the genuineness of the employment:

- (a) The evidence demonstrated that the Applicant owns a fleet of 67 trucks;
- (b) The Applicant had not demonstrated a reasonable need for a truck driver with 13+ years of experience.

[23] In addition, the Officer made the following findings with respect to the requirement of a positive or neutral effect on the Canadian labour market:

- (a) The evidence did not demonstrate the employer made reasonable efforts to hire or train Canadians or permanent residents;
- (b) The employer's advertisement on the Job Bank, Allstarjobs.ca and Jobsforaborigonals.ca all stated that potential candidates were required to have 13+ years of experience. Compared to similar job advertisements for the position, truck drivers do not usually require any mandatory years of experience. Canadian candidates might have applied if the requirements matched similar experience requirements for similar job postings.

- (c) The employer's rationale for requiring 13+ years of experience was insufficient to demonstrate this was a bona fide requirement to perform the duties of a truck driver. The position was advertised with excessive requirements.
- (d) Due to the excessive requirements in the advertisement, the employer did not demonstrate reasonable efforts to hire or train Canadian citizens or permanent residents.

[24] On September 9, 2024, the Applicant initiated an application for judicial review of the Officer's Decision.

IV. Issues and Standard of Review

[25] The parties submit, and I agree, that the applicable standard of review applicable to the Officer's decision to issue a negative LMIA decision is reasonableness; *Marcom Resources Ltd v Canada (Employment, Workforce Development and Labour)*, 2020 FC 182 at para 9, *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 25, 86.

[26] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (Vavilov at paras 12–15, 95). The starting point for a reasonableness review is the reasons for decision. Pursuant to the Vavilov framework, a reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (Vavilov at para 85).

[27] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100).

[28] The standard of review for procedural fairness issues is correctness, or akin to correctness (*Vavilov* at para 53; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56). The reviewing court must consider what level of procedural fairness is necessary in the circumstances and whether the “procedure followed by the administrative decision maker respect[s] the standards of fairness and natural justice” (*Chera v Canada (Citizenship and Immigration)*, 2023 FC 733 at para 13). In other words, a court must determine if the process followed by the decision maker achieved the level of fairness required in the circumstances (*Kyere v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 120 at para 23, citing with approval *Mission Institution v Khela*, 2014 SCC 24 at para 79).

[29] The issues in this application are:

- a) Was the Officer’s decision that the Applicant failed to demonstrate that the offer of employment was genuine unreasonable?
- b) Was the Officer’s decision that the Applicant failed to establish a positive or neutral effect on the Canadian labour market reasonable?
- c) Did the Officer breach the duty of procedural fairness owed to the Applicant?
- d) Did the Officer fetter their discretion?

V. Analysis

A. *Genuine offer of employment*

[30] The Applicant submits that the Decision finding the offer of employment was not genuine—on the basis that they did not establish they would be able to fulfill the terms of the job offer—is unintelligible. Further, they argue that the Officer unreasonably concluded that the employer did not demonstrate that the job offer was consistent with their reasonable employment needs.

[31] The Respondent submits that the Officer reasonably determined that the offer of employment was not genuine because the Applicant did not demonstrate that the job offer aligned with their reasonable employment needs and that they would be able to fulfill the terms of the job offer.

[32] The Respondent argued that the Court only needs to find that one of those determinations was reasonable to uphold the Officer’s decision and dismiss the Application; *Hakobyan v Canada (Citizenship and Immigration)*, 2015 FC 499. I agree.

[33] A review of the Decision indicates that the Officer had concerns related to reasonable employment needs of the Applicant in relation to the size of their fleet. In their LMIA application, the Applicant claimed to have a fleet of 140+ trucks and therefore, had a need to fill vacant driver positions. However, the Applicant’s Carrier Profile only showed that they owned a fleet of 23 trucks.

[34] A review of the record illustrates that the Applicant was given an opportunity to provide information to address the Officer's concern with respect to the size of the Applicant's fleet. The Applicant was requested to provide insurance documents to support the information concerning the size of their fleet and to provide an up-to-date carrier profile.

[35] The Applicant's response to the request for additional information indicated that they had 18 employees, 200 drivers (including 198 sub-contractors) and a fleet of 140 trucks. The Applicant provided evidence that 67 trucks were insured. The Applicant explained that the nature of their business, in particular, that 75% of their business is tied to long-haul routes, requires drivers to work in teams (usually teams of two drivers).

[36] A review of the Decision and the record in support of the Decision indicates that the Officer concluded, based on the evidence provided by the Applicant, that they had a fleet of 67 trucks. The Officer found that even if all trucks were operated with teams of two drivers, the employer only had a requirement for 134 drivers. The LMIA application indicated that the Applicant has a complement of 200 drivers. The Officer therefore concluded that the Applicant had a surplus of drivers. Accordingly, the Officer concluded that the Applicant would not be able to fulfill the terms of the offer of employment.

[37] The Officer's conclusions with respect to the Applicant's reasonable employment needs are in my view logical, reasonable and intelligible in view of the evidence provided in support of the LMIA.

B. *Impact on Canadian labour market*

[38] The Applicant argued that the Decision that they failed to establish a positive or neutral effect on the Canadian labour market was not reasonable.

[39] The Respondent argued that the Officer considered the evidence and the Decision is reasonable. In particular, the Officer's conclusion, that the experience requirement of 13+ years for a truck driver was excessive, was reasonable and consistent with industry standards.

[40] A review of the Decision and supporting notes indicates that the Officer compared the Applicant's job posting to other job postings in the National Job Bank and the provincial and territorial counterparts. In addition, the Officer considered the National Occupational Classification prepared by Statistics Canada. The Officer found that a posting for the position of truck driver "does not usually require any mandatory years of experience requirement".

[41] The Officer found that the experience requirement set out by the Applicant illustrated that the Applicant had failed to make reasonable efforts to hire and/or train Canadians or permanent residents; the Officer found that Canadian or permanent resident job seekers may have been discouraged from applying because of the experience requirement set out in the job posting.

[42] The Applicant was given an opportunity to provide additional evidence and submissions to support the experience requirement set out in the posting. The Applicant argued that they required a driver with 13+ years experience because they would be able to "work independently

with minimal supervision and possesses a deep understanding of their responsibilities". Further, the Applicant submitted that drivers with significant experience would be able to "seamlessly integrate" into their operations and would be a "top-performing employee from day one".

[43] The Applicant argued that notwithstanding industry standards, they are entitled to request applicants with the skills they deem appropriate and required for the position.

[44] The Respondent argued that the explanation provided was vague and did not clearly indicate why a 13+ year experience requirement was justified. Further, they argued that it is not clear why the Applicant needs to go beyond industry standards, nor should employers be able to alter industry standards.

[45] This Court has held that the TFWP is not intended to be used as a vehicle to permit prospective employers to change industry standards by excluding segments of the Canadian or permanent resident workforce in Canada who traditionally fulfill positions in a particular segment of Canada's labour market; *Frankie's Burgers Lougheed Inc v Canada (Employment and Social Development)*, 2015 FC 27 [Frankie's Burgers] at para 43.

[46] I agree. In this case, the Officer noted that the experience requirement set by the employer did not align with other similar positions identified in the National and provincial/territorial Job Banks. The Applicant provided a vague explanation for the requirement; however, this failed to satisfy the Officer that the employer demonstrated that

reasonable efforts to hire and/or train Canadian or permanent resident job seekers had been made. In my view, it was open to the Officer to conclude as they did.

[47] I am not persuaded by the Applicant's submission that the Officer failed to engage with the evidence or that the reasons for Decision are conclusory. A review of the entire record illustrates that the Officer engaged with the explanation provided by the Applicant and was not persuaded that the Applicant had sufficiently justified the experience requirements set out in the job posting.

[48] The Applicant has not persuaded me that the Officer made a reviewable error in their assessment of this factor.

C. *Breach of procedural fairness*

[49] The Applicant argued that the process followed in making the decision was unfair.

[50] The Respondent argued that the Officer did not breach the duty of procedural fairness. They argued that the duty owed in the context of LMIA is at the low end of the spectrum, and the onus is on the Applicant to provide all information in support of their application.

[51] This Court has held that the duty of procedural fairness in the context of LMIA applications is at the lower end of the spectrum. This is because the LMIA process "is far from judicial in nature", unsuccessful applicants may resubmit another application, and a negative

LMIA assessment does not have a substantial adverse impact on employers nor does it carry profound or permanent consequences; *Frankie's Burgers* at para 73.

[52] While the duty owed is at the lower end of the spectrum, the Court has also noted that “employers have a legitimate expectation that they will be afforded an opportunity to respond” to ESDC concerns with their application; *Frankie's Burgers* at para 74.

[53] The Respondent submits that the “onus is on an applicant to satisfy the officer on all parts of the application”, particularly where the concerns arise directly from the requirements set out in the legislation and regulations; *Portillo v Canada (Citizenship and Immigration)*, 2014 FC 866 at para 34. I agree.

[54] In addition to the factors set out at subsection 200(5) and 203(3) of the *IRPR*, I note that the ESDC website provides information for employers in the trucking industry seeking a LMIA. The information available on the website clearly indicate that employers must always submit a copy of their carrier profile, current National Standard Code certificate and a copy of the fleet insurance; Business legitimacy - Canada.ca.

[55] As noted above, a review of the record for this Application indicates that in an email dated July 12, 2024, the Applicant was put on notice of the Officer’s concerns with respect to the number of trucks in their fleet and was requested to provide insurance documentation for all trucks insured. In addition, on July 25, 2024, the Officer requested via email, an up-to-date

carrier profile, as the documentation provided in support of the LMIA only showed that the Applicant had a fleet of 23 trucks.

[56] The Officer clearly provided the Applicant with an opportunity to submit evidence to support their claim they had a fleet of 140 trucks. However, the evidence they provided in support of the original application established a fleet of 23 trucks, and the additional responses and evidence provided on July 25 and July 26, 2024, only established a fleet of 67 trucks. Ultimately, the onus was on the Applicant to demonstrate through their application and evidence submitted in support that they had a genuine offer of employment that they would be able to fulfill.

[57] The Applicant asserts that because the Officer failed to make a separate request for complete insurance documentation from Alberta, they were denied procedural fairness.

[58] I cannot agree with this submission. The Applicant was clearly put on notice that the information concerning the size of their fleet was not complete and was not supported by evidence. The Applicant was given an opportunity to provide additional supporting evidence, and they failed to provide complete information. It is not clear why the Applicant failed to provide the supporting documentation concerning the Alberta insurance that they say would have supported the information in the LMIA concerning the size of their fleet. I am unable to agree with the Applicant, that they were denied procedural fairness or that the Officer was required to make another separate request for this information.

D. *Fettering of discretion*

[59] The Applicant argued that the Officer fettered their discretion in their determination that the 13+ years experience requirement for the posting was excessive.

[60] The Respondent argued that the Officer clearly compared the Applicant's job posting with similar job postings for truck drivers in the National and provincial/territorial Job Banks and found that similar postings did not include the Applicant's experience requirement. The Respondent submitted that the Officer did not "rigidly apply a pre-determined yet undisclosed threshold" for what constitutes excessive experience.

[61] I agree. As noted above, a review of the record for this Application illustrates that the Officer conducted a comparison with other truck driver postings in the National Job Banks and consulted the Statistics Canada National Occupational Classification to confirm that generally, the experience requirement set by the Applicant was not consistent with industry standards.

[62] The Officer's reasons are clear. The Applicant has not persuaded me that the Officer fettered their discretion or relied on undisclosed and predetermined thresholds to determine that the experience requirement for the posting was excessive.

VI. Conclusion

[63] The Applicant has not persuaded me that the Officer's decision was unreasonable in view of the evidence submitted in support of their LMIA. The Officer's conclusions were reasonable and were within the range of outcomes, in view of the facts, evidence and law.

[64] The Applicant did not establish that there has been a breach of procedural fairness or that the Officer fettered their discretion. The Applicant was provided a clear opportunity to clarify concerns raised by the Officer with respect to deficiencies in their original application.

JUDGMENT in IMM-16457-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.

"Julie Blackhawk"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-16457-24

STYLE OF CAUSE: 11043277 CANADA INC. v THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 19, 2025

JUDGMENT AND REASONS: BLACKHAWK J.

DATED: JANUARY 14, 2026

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